

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

PAUL ARTHUR LOPEZ,

Petitioner,

v.

Civ. No. 09-218 JB/RLP

STATE OF NEW MEXICO, *et al.*,

Respondents.

ORDER

THIS MATTER comes before the Court *sua sponte* after a review of the docket. On May 14, 2009 Petitioner filed a "Certificate of Service" [Doc. 19] indicating he had served Respondents with Requests for Admissions. For the reasons set forth below, Respondents are not required to respond to this discovery request, and Petitioner is foreclosed from serving further discovery unless so ordered by the Court.

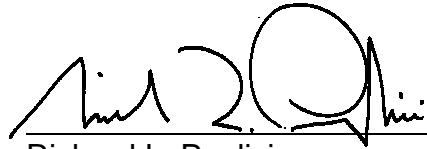
Unlike the usual civil litigant in federal court, a habeas petitioner "is not entitled to discovery as a matter of ordinary course." *Bracy v. Gramley*, 520 U.S. 899, 904 (1997). Pursuant to Rule 6(a) of the § 2254 Rules, to allow discovery is a matter of discretion by the Court and only if the Petitioner has shown good cause therefor. *Smith v. Gibson*, 197 F.3d 454, 459 (10th Cir. 1999). Good cause is established if the applicant makes specific allegations that give the court "reason to believe that the [applicant] may, if the facts are fully developed, be able to demonstrate that he is . . . entitled to relief." *Id.* at 908-09 (internal quotation marks omitted).

The function of a federal court on habeas review is not to determine the guilt or innocence of a petitioner, but is only to determine whether the petitioner "is in custody in

violation of the Constitution or laws or treaties of the United States,” 28 U.S.C. § 2241(c)(3), based on an adjudication in the state court which satisfies the mandates of 28 U.S.C. § 2254(d).

In this case, Respondents’ Answer has been ordered and is not due until June 9, 2009. Discovery at this stage of the proceeding is not warranted and, in any event, Petitioner has not provided the Court with any reason for discovery. Accordingly, Respondents are not required to respond to Petitioner’s Requests for Admissions and Petitioner shall refrain from requesting discovery unless ordered by the Court.

IT IS SO ORDERED.



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Richard L. Puglisi  
United States Magistrate Judge